From: Kler, Denis

Sent: Monday, July 02, 2018 02:13 PM

To: Mia, Marcia; Hambrick, Amy

CC: McNeal, Dave

Subject: FW: 60 OOOOa: reconstruction and territorial seas

Additional information from ADEM.

Denis B. Kler

U.S. EPA Region 4

APTMD/AETB/North Air Enforcement and Toxics Section

Work: 404.562.9199

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From: Rogers, R Jackson [mailto:jackson.rogers@adem.alabama.gov]

Sent: Friday, June 29, 2018 4:50 PM

To: Kler, Denis <Kler.Denis@epa.gov>

Subject: RE: 60 OOOOa: reconstruction and territorial seas

Denis,

Thanks for the attention to this.

I wanted to let you know that this week I pressed ExxonMobil on how exactly they intend to swap out +50% by $ of the parts of their old pneumatic controllers with new parts. I had originally taken their word for it that it was reconstruction, since it's more common to see people try to argue their way out of "reconstruction" (their position was that they would be subject to OOOOa after the project but wanted confirmation). But I realized they'd mentioned make/model for the proposed controllers, suggesting they're probably not overhauling so much as replacing.

After questioning them, they say are completely replacing the ~50 controllers in question (presuming the definition of controller in 60.5430a isn't meant to rope in gas and power lines). As I understand it, each would be a new facility, rather than existing facilities being reconstructed, but each would also fail to meet the definition of an affected facility per OOOOa via having ~4 scf/h bleed at a non-gas plant. If correct, that renders my previous questions hypothetical. I am still interested in your interpretation of the situation as it was described previously, but I understand if you don't have the resources to devote to something moot.

Jackson Rogers

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From: Kler, Denis [mailto:Kler.Denis@epa.gov]

Sent: Tuesday, June 26, 2018 2:13 PM

To: Rogers, R Jackson <jackson.rogers@adem.alabama.gov>

Subject: RE: 60 OOOOa: reconstruction and territorial seas

Jackson,

I have received your email and I will have to corrdinate with other individuals for a response.

Denis

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From: Rogers, R Jackson [mailto:jackson.rogers@adem.alabama.gov]

Sent: Thursday, June 21, 2018 4:52 PM

To: Kler, Denis <Kler.Denis@epa.gov>

Subject: 60 OOOOa: reconstruction and territorial seas

Denis,

I have two 60 Subpart OOOOa applicability questions arising from the same circumstance that I wanted to bounce off you.

ExxonMobil, at the various gas production production platforms comprising their Mary Ann Field facility, all entirely within Mobile Bay, are intending to reconstruct their gas-powered pneumatic controllers. These pneumatic controllers operate at 12 scf/h bleed and were constructed prior to 2011; after the reconstruction they will operate at 4 scf/h. ExxonMobil assures that the replacement of parts, etc. would cost +50% of the original capital cost; they meet that core element of reconstruction. Modification cannot apply and is not in question since it's net negative emissions. Here are my two questions:

Does an existing facility, upon reconstruction, become an affected facility while not meeting a Subpart's definition of affected facility?

I am of two minds reading this. Per §60.5365a(d), pneumatic controller affected facilities are two and only two things: (d)(1) gas-driven, >6 scf/h, continuous-bleed controllers anywhere in the industry but a gas plant constructed/modified/reconstructed after 9/18/15 and (d)(2) gas-driven, continuous-bleed controllers at gas plants constructed/modified/reconstructed after 9/18/15. A gas-driven, 4 scf/h, continuous-bleed controller at a natural gas production platform reconstructed in 2018 wouldn't meet the at gas plant element of (d)(2) and wouldn't meet the >6 scf/h element of (d)(1).

Conflicting with that, in Subpart A, there's a hard §60.15(a) "An existing facility, upon reconstruction, becomes an affected facility, irrespective of any change in emission rate." (all of §60.15 except for §60.15(d) applies to pneumatic controllers, per Subpart OOOOa's Table 3). Two different parts of that contradict the above analysis. "An existing facility, upon reconstruction, becomes an affected facility": To be sure, these controllers are existing facilities (even without regard to their current 12 scf/h bleed rate just by virtue of being pneumatic controllers) via the definition in §60.2. "…irrespective of any change in emission rate": But OOOOa explicitly defines a couple types of affected facilities (storage vessels and pneumatic controllers not-at-gas-plants) by emission rate. The two conflict, so does §60.15(a) override or does §60.5365a(d)(1)? My inclination is that the more specific regulation (OOOOa) here always trumps.

So this is both specifically about pneumatic controllers under OOOOa and also a broader question as the title implies. I might have missed relevant answers in the Applicablity Determination Index, but nearly everything I saw seemed to revolve around proving the

50% cost element.

What is the definition of territorial seas as it applies to the definition of onshore?

A more to the point way of phrasing that is: is EPA using territorial seas here in the same way as the term is used by other US Departments and on an even larger scope in maritime law (UN Convention on the Law of the Sea)? I couldn't find an EPA definition of territorial seas, so I'm exploring what the term generally means. Under the maritime law definitions, everything 3 miles seaward of a state's baseline is territorial seas, and any water landward of that is inland waters; in drawing the baseline a state may account for features like headlands (Mobile Point) and barrier islands (Dauphin Island) and draw a straight-line between the two across mouths of bays, etc. If EPA means territorial seas in that way, then facilities a few miles into Mobile Bay (or, analogously, Cook Sound Alaska) are technically onshore, and I wanted to confirm that that's how the regulation should be read.

If their reconstructed <6 scf/h pneumatic controllers were to be subject the OOOOa, compliance would require little effort; standard is to make sure the controller is <6 scf/h & compliance is to prove it, document it, tag it, etc. ExxonMobil reads OOOOa as applying to their controllers upon reconstruction and intends to comply regardless. But I am interested in the question of applicability for its own sake because it could apply to something more pressing in the future. I appreciate your attention.

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